



# City of Marietta

205 Lawrence Street  
Post Office Box 609  
Marietta, Georgia 30061

## Motion Signature

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**File Number: 20140953**

**V2014-43 Clear Channel Outdoor, Inc. 611 Webb Industrial Drive**

**V2014-43 [VARIANCE] CLEAR CHANNEL OUTDOOR, INC.** request variances for property located in Land Lot 09980, District 16, Parcel 0120, 2nd Section, Marietta, Cobb County, Georgia and being known as 611 Webb Industrial Drive, currently zoned HI (Heavy Industrial). Ward 5B.

1. Variance to reduce the side setbacks for a billboard support structure from 20' to 11'
2. Variance to reduce the rear setback for a billboard support structure from 40' to 23'
3. Variance to reduce the rear and side setbacks for billboard sign faces to 0'
4. Variance to locate a billboard within 1,000' of other billboards
5. Variance to locate a billboard on a substandard lot
6. Variance to reduce the minimum lot width from 150' to 21'
7. Variance to locate a billboard closer to a permanent structure than a distance that is equal to or greater than the height of the sign

**Date** December 10, 2014

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R. Steve Tumlin, Jr., Mayor

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Stephanie Guy, City Clerk



Department of Development Services  
205 Lawrence Street  
Marietta, Georgia 30060  
Brian Binzer, AICP, Director

### APPLICATION FOR VARIANCE OR APPEAL

(Owner/Applicant/or Representative must be present at all public hearings)

Application #: V2014-43 CC Hearing: 10/8/14 Registrar # 20140953

This is a variance/appeal application for:

☐

Board of Zoning Appeals

☒

City Council

Owner's Name Bryce Development, Inc.

Address P.O. Box 981805, Park City, UT Zip Code: 84098

Telephone Number: (435) 901-2768 Email Address: tk.fitz@yahoo.com

#### COMPLETE ONLY IF APPLICANT IS NOT OWNER:

Applicant Clear Channel Outdoor, Inc.

Address 1200 Wilson Way, Suite C, Smyrna, GA Zip Code: 30082

Telephone Number (404) 954-9836 Email Address: speters@swflp.com

Address of property for which a variance or appeal is requested:

611 Webb Industrial Drive Date of Acquisition: \_\_\_\_\_

Land Lot (s) 998 District 16 Parcel 120 Acreage .0219 Zoned HI Ward 5B FLU IM

List the variance(s) or appeal requested (please attach any additional information):

Variances to allow modification of existing legal non-conforming sign affected by I-75 project.

Please see attached Letter of Intent for more information.

#### Required Information

1. Application fee (\$250)
2. Completed notarized application. **The original application must be submitted with ALL original signature(s) – Copies of the application or signature(s) will NOT be accepted.**
3. Legal description of property.
4. Letter describing the reason for the variance request, stating why strict adherence to the code would result in a particular hardship (as distinguished from a mere inconvenience or desire to make more money).
5. Site plan - 25 copies of site plan drawn to scale. Site plans must illustrate property lines and all relevant existing information and conditions in addition to proposed additions or modifications within the referenced property lines of the tract(s).
6. Copy of current tax bill showing payment or documentation certified by the City of Marietta Tax Office.
7. Documentation authorizing applicant to submit application by property owners if applicant is not owner.

**Note: The Department of Development Services reserves the right to obtain additional information that reasonably may be required in order that an informed decision may be made.**

**OVER**

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**STAFF REVIEW**

**Variance Case #:** V2014-43 **Legistar #:** 20140953

**City Council Hearing:** Wednesday, November 12, 2014 – 7:00 p.m.

**Property Owner:** Mr. Tom Fitzpatrick, President  
Bryce Development, Inc.  
P. O. Box 981805  
Park City, UT 84098

**Applicant:** Mr. Bryan Gaylor, V.P.  
Real Estate & Public Affairs  
Clear Channel Outdoor, Inc.  
1200 Wilson Way, Suite C  
Smyrna, GA 30082

**Agent:** Scott W. Peters  
Schreeder, Wheeler & Flint, LLP  
1100 Peachtree Street, N.E.  
Suite 800  
Atlanta, GA 30309-4516

**Address:** 611 Webb Industrial Drive

**Land Lot:** 09980 **District:** 16 **Parcel:** 0120

**Council Ward:** 5B **Existing Zoning:** HI (Heavy Industrial)

**Special Exception / Special Use / Variance(s) Requested:**

1. Variance to reduce the side setbacks for a billboard support structure from 20' to 11.' §708.27 (H.); §714.04 (G.)(1.); §714.04 (G.)(8.)
2. Variance to reduce the rear setback for a billboard support structure from 40' to 23.' §708.27 (H.); §714.04 (G.)(1.); §714.04 (G.)(8.)
3. Variance to reduce the rear and side setbacks for billboard sign faces to 0.' §708.27 (H.); §714.04 (G.)(1.); §714.04 (G.)(8.)
4. Variance to locate a billboard within 1,000' of other billboards. §714.04 (G.)(5.)
5. Variance to locate a billboard on a substandard lot. §708.27 (H.); §714.04 (G.)(1.); §714.04 (G.)(5.); §704.04
6. Variance to reduce the minimum lot width from 150' to 21.' §708.27 (H.); §714.04 (G.)(1.); §714.04 (G.)(8.)
7. Variance to locate a billboard closer to a permanent structure than a distance that is equal to or greater than the height of the sign. §714.04 (G.)(10.)

### **Statement of Fact**

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

### **Criteria:**

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

### **PICTURES**



**North facing (static) panel – 611 Webb Industrial Drive**

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**Staff Review:**

*As part of its Northwest Corridor Project, the Georgia Department of Transportation (GDOT) will be widening I-75 westward in order to construct elevated, managed lanes. This is resulting in the condemnation of properties, many of which contain legally nonconforming billboards, along the west side of I-75. In this case, although the existing billboard is not being acquired by GDOT as part of the I-75 managed lane project, the applicant is requesting multiple variances so the existing billboard may be demolished and reconstructed at the same location, except that the new billboard is proposed at a height of 70 feet (an increase in height of 35 feet).*

Scott Peters, representing Clear Channel Outdoor Inc., is requesting variances that would allow the reconstruction of a billboard located at 611 Webb Industrial Drive. The subject property is adjacent to I-75, zoned HI (Heavy Industrial), and currently contains a double-sided, static face billboard. The surrounding properties are also zoned HI and RRX (Railroad and Railroad Crossings). The existing sign is not proposed to be demolished by GDOT as part of the I-75 managed lane project, however, the applicant is requesting the variances in order to construct a higher sign due to the increase in elevation of the new managed lanes.

Section 714.04 (G.) states that "No billboard lawfully in existence on December 11, 2013 shall be altered or moved unless it is made to comply with the provisions of this Division." Additionally, Section 714.06 (C.)(3.) states that "no structural repairs or changes in the size, shape, location, or design of this sign shall be permitted except to make the sign comply with the requirements of this article." In order to reconstruct the sign, the following variances would be necessary:

1. Variance to reduce the side setbacks for a billboard support structure from 20' to 11.'
2. Variance to reduce the rear setback for a billboard support structure from 40' to 23.'
3. Variance to reduce the rear and side setbacks for billboard sign faces to 0.'
4. Variance to locate a billboard within 1,000' of other billboards.
5. Variance to locate a billboard on a substandard lot.
6. Variance to reduce the minimum lot width from 150' to 21.'
7. Variance to locate a billboard closer to a permanent structure than a distance that is equal to or greater than the height of the sign.

*As stated above, although the existing billboard is not being acquired by GDOT as part of the I-75 managed lane project, the applicant is requesting multiple variances so the existing billboard may be demolished and reconstructed at the same location, except that the new billboard is proposed at a height of 70 feet (an increase in height of 35 feet).*

**This request for variances was discussed by City Council on Wednesday October 8, 2014, and there were questions about the area of the property and the possibility of acquiring additional property. After a lengthy discussion the matter was tabled until the next regularly scheduled City Council meeting on Wednesday November 12, 2014.**

## **PUBLIC NOTICE OF VARIANCES**

The City of Marietta hereby gives notice that a public hearing will be held to give consideration to the following Variances for a recommendation to the City Council at their meeting on **Wednesday, December 10, 2014, 7:00 p.m.**, City Hall, for a final decision to be made.

**V2014-43 [VARIANCE] CLEAR CHANNEL OUTDOOR, INC.** request variances for property located in Land Lot 09980, District 16, Parcel 0120, 2<sup>nd</sup> Section, Marietta, Cobb County, Georgia and being known as 611 Webb Industrial Drive, currently zoned HI (Heavy Industrial). Variance to reduce the side setbacks for a billboard support structure from 20' to 11'; Variance to reduce the rear setback for a billboard support structure from 40' to 23'; Variance to reduce the rear and side setbacks for billboard sign faces to 0'; Variance to locate a billboard within 1,000' of other billboards; Variance to locate a billboard on a substandard lot; Variance to reduce the minimum lot width from 150' to 21'; Variance to locate a billboard closer to a permanent structure than a distance that is equal to or greater than the height of the sign. Ward 5B.

A description and plat of the property sought for the rezoning and future land use assignment are on file in the Planning and Zoning Office, City Hall, and is available for inspection between 8:00 A.M. and 5:00 P.M., Monday through Friday. Anyone wishing to attend may do so and be heard relative thereto.

For additional information please call the Planning and Zoning Office (770) 794-5440.

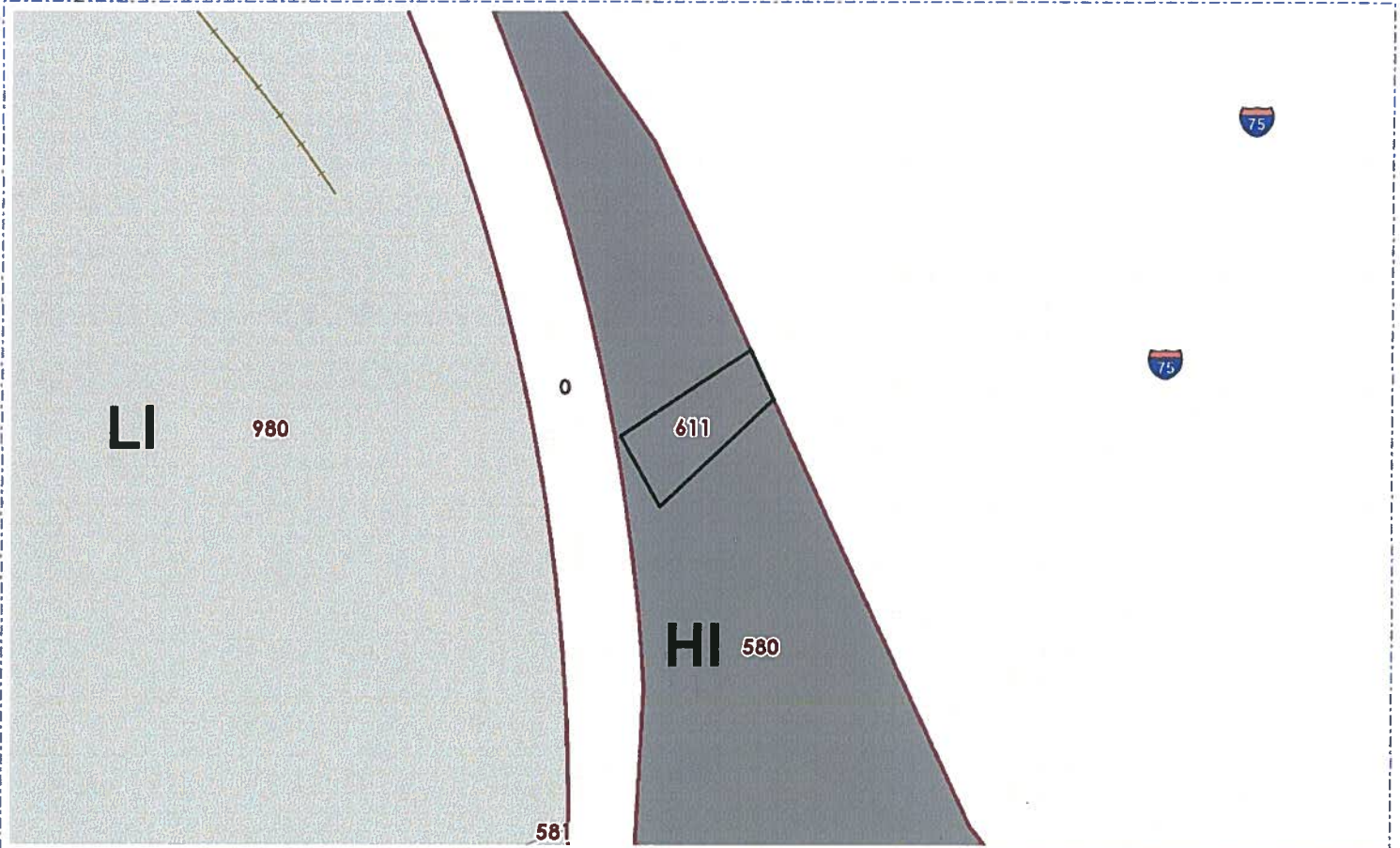
**Accessibility to Meetings:** If you believe you may need the City/BLW to provide special accommodations in order to attend/or participate in any of the above meetings, please call Mr. Patrick Henley, ADA Coordinator, at 770-794-5558 (voice) or 770-794-5560 (TDD) no later than 48 hours before the date of the above meeting.

City of Marietta  
205 Lawrence Street  
Marietta, Georgia 30060





# Variance






Address	Parcel Number	Acreage	Ward	Zoning	FLU
Property Owner: Clear Channel Outdoor				<b>Zoning Symbols</b> Railroads City Limits Cobb County Pockets NA R1 - Single Family Residential (1 unit/acre) R2 - Single Family Residential (2 units/acre) R3 - Single Family Residential (3 units/acre) R4 - Single Family Residential (4 units/acre) RA4 - Single Family Residential - Attached RA6 - Single Family Residential - Attached RA8 - Single Family Residential - Attached MHP - Mobile Home Park PRD-SF - Planned Residential Dev. Single Family RM8 - Multi Family Residential (8 units/acre) RM10 - Multi Family Residential (10 units/acre) RM12 - Multi Family Residential (12 units/acre) RHR - Residential High Rise PRD-MF - Planned Residential Dev. Multi Family NRC - Neighborhood Retail Commercial CRC - Community Retail Commercial RRC - Regional Retail Commercial PCD - Planned Commercial Development LI - Light Industrial HI - Heavy Industrial PID - Planned Industrial Development MXD - Mixed Use Development CBD - Central Business District OIT - Office Institutional Transitional LRO - Low Rise Office OI - Office Institutional OS - Office Services OHR - Office High Rise	
Applicant:					
City Council Hearing Date: 12/10/2014					
Acquisition Date:					
Case Number: V2014-43					
City of Marietta Planning & Zoning					



# Aerial Map



Address	Parcel Number	Acreage	Ward	Zoning	FLU
<b>Property Owner:</b> Clear Channel Outdoor					
<b>Applicant:</b>					
<b>City Council Hearing Date:</b> 12/10/2014					
<b>Planning Commission Hearing Date:</b>					
<b>BZA Hearing Date:</b> Case Number: V2014-43					
<b>Comments:</b>					
City of Marietta Planning & Zoning					

**Legend**  
 Railroads  
 City Limits  
 Cobb County Pockets



LAW OFFICES  
SCHREEDER, WHEELER & FLINT, LLP  
1100 PEACHTREE STREET, NE  
SUITE 800  
ATLANTA, GEORGIA 30309-4516

(404) 681-3450  
FACSIMILE: (404) 681-1046

Scott W. Peters

E-Mail: [speters@swflp.com](mailto:speters@swflp.com)

Direct Dial: (404) 954-9836

August 19, 2014

VIA HAND DELIVERY

Mr. Brian Binzer, Director  
Department of Development Services  
City of Marietta  
205 Lawrence Street  
Marietta, GA 30060

RE: Application for Variance – Clear Channel Outdoor  
Letter of Intent  
611 Webb Industrial Drive/GDOT Parcel 71

Dear Mr. Binzer:

Please accept this letter in support of the application of Clear Channel Outdoor, Inc., in regard to its request to reconstruct its existing legal non-conforming sign located at 611 Webb Industrial Drive in order to preserve the visibility of the sign. This existing outdoor advertising sign is subject to a condemnation action by the Georgia Department of Transportation ("GDOT") for the I-75 managed lane project. This variance application seeks approval to allow the sign to be reconstructed at its existing location at a height of 70' above the current elevation of the nearest general travel lane of I-75 (an increase in height of 35'). The replacement sign shall be of the same size and shape, and the only modification will be to increase its height in order to maintain the visibility of the sign to the existing travel lanes of I-75.

GDOT is in the process of condemning a limited portion of the parcel upon which this billboard is located. The property currently consists of approximately 976 square feet, and the sole improvement located upon the property is the existing outdoor advertising sign of Clear Channel Outdoor. The property has no value other than for use with the outdoor advertising sign. The top of the sign is currently approximately 35' above the adjoining travel lanes of I-75 immediately adjacent to the sign. However, the new managed lanes will be constructed more than 20' above the existing road grade immediately adjacent to the sign, and the elevation of the new managed lanes will continue to increase in height to the north of the sign location. As a result, the bottom

LAW OFFICES  
SCHREEDER, WHEELER & FLINT, LLP

Mr. Brian Binzer

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edge of the sign will be even with (or below) the new managed lanes that are being constructed.

Clear Channel Outdoor owns a permanent easement across the property upon which the sign is located for purposes of maintenance and operation of the sign. In addition, Clear Channel Outdoor is the owner of easements for both access and visibility to I-75 across the adjoining property owned by Capital Materials, Inc. If the height of the sign can not be increased, these property interests of Clear Channel Outdoor will be significantly impacted. While the top of the sign is presently only 35' above the adjoining elevation of I-75, the Marietta Code of Ordinances allows an outdoor advertising sign to be up to 70' above the elevation of the adjoining roadway (Section 714.04.G.6).

Attached hereto as Exhibit "A" is a Variance Analysis detailing the variances requested in order to allow the reconstruction of the sign at an overall height of 70' above the existing road grade of I-75. As you can see by this analysis, there are no changes to the non-conformities that are applicable to the sign, as the increase in the height of the sign will be in conformity with the provisions of Section 714.04.G.6 of the Marietta Sign Ordinance. Upon reconstruction, the sign will be built in conformity with existing building codes, and shall be on the same footprint of the existing sign. The sign shall remain the same size and shape, only the height shall be increased by the requested thirty five feet.

In support of this request, Clear Channel Outdoor shows that its existing outdoor advertising sign is a legal non-conforming use which was originally constructed pursuant to a permit that was issued by the City of Marietta. In addition, Clear Channel Outdoor possesses a GDOT permit for this sign. The non-conformity of the existing sign is due to no action by Clear Channel Outdoor, but rather has resulted in changes to the Marietta code following the construction of the sign.

Clear Channel Outdoor further shows that the conditions requiring the request for this variance are being caused by GDOT, and not by any action of Clear Channel Outdoor or the property owner. The extraordinary and exceptional circumstances are the result of the actions of GDOT in condemning a portion of the property for the I-75 managed lane project, and constructing the new managed lanes at a significantly higher elevation than the existing I-75 general travel lanes. GDOT is constructing the managed lanes at an elevation of approximately 20' feet higher than existing road grade immediately adjacent to the sign, and approximately 20'-25' higher than existing grade immediately to the north of the subject sign (as reflected on attached GDOT plans and cross sections). It is this increase in height of the adjoining road which Clear Channel

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Mr. Brian Binzer

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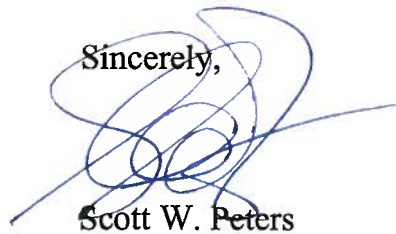
August 19, 2014

Outdoor seeks to address by the requested increase in the height of the sign to 70' above the existing adjoining road grade. This increase in height will merely allow the sign to maintain visibility consistent with that which exists today to the adjoining travel lanes of I-75.

The granting of these variances will allow Clear Channel Outdoor to maintain this outdoor advertising sign in substantially the same condition which exists today. The requested variances are the minimum necessary to allow Clear Channel to maintain the use of this outdoor advertising sign, which is located immediately adjacent to I-75. If approved, the grant of these variances will also save the taxpayers of the State of Georgia (including those in Marietta) substantial expenses that would have to otherwise be paid to the Clear Channel Outdoor for the condemnation of its property interests and outdoor advertising sign. The ability to continue the use of this sign will also maintain the tax base of the City of Marietta by preventing the subject property value from being reduced by the loss of this asset. Clear Channel would not be able to viably maintain this existing non-conforming sign due to the actions of GDOT, and the Marietta Sign Ordinance would prohibit the reconstruction of the sign as requested without the approval of the requested variances.

Clear Channel Outdoor respectfully requests that this variance application be approved so as to permit the requested reconstruction of this existing legal non-conforming sign at a height of 70' over existing I-75 road grade. Thank you for your consideration in this regard.

Sincerely,



Scott W. Peters

SWP/cal  
Enclosure

## Parcel 71 - Variance Analysis

Clear Channel Outdoor

	Ordinance Requirement	As-Built	As-Proposed
1	Within 100 feet of the right-of-way of Interstate 75.	Yes	Yes
2	Billboards shall also be regulated as a <b>principal use</b> and are required to meet all <b>dimensional standards</b> of the applicable zoning district. HI setbacks: Minimum Lot Size: 40,000 sq. ft. Minimum Lot Width: 150 ft. Maximum Building Height: 50 ft. Maximum Floor Area Ratio: 1.0 Maximum Impervious Surface: 85% Front Setback (arterial): 75 ft. Front Setback (collector): 50 ft. Front Setback (local): 50 ft. Side Setback (major): 50 ft. Side Setback (minor): 20 ft.	Billboard on separate parcel, warehouse on adjoining parcel.  Lot size: 0.029 Acres Lot width: 28' at widest Max Building Height: 53 ft. Max Floor Area Ratio: 5% Max Impervious Surface: ~10% Min landscaped area: 50% Front Setback (arterial): NA Front Setback (collector): NA Front Setback (local): 0.5 ft. Side Setback (major): 0.5 ft. Side Setback (minor): NA	Billboard on separate parcel, warehouse on adjoining parcel.  Lot size: 0.029 Acres Lot width: 28' at widest Max Building Height: 70 ft. Max Floor Area Ratio: 5% Max Impervious Surface: ~10% Min landscaped area: 50% Front Setback (arterial): NA Front Setback (collector): NA Front Setback (local): 0.5 ft. Side Setback (major): 0.5 ft. Side Setback (minor): NA
3	No billboard shall be placed within 500 feet of a residential zoning district, church, school, park, public building or cemetery.	None	None
4	No billboard shall contain a sign area in excess of 672 square feet.	Panel size = 672	Panel size = 672
5	No billboard shall contain more than 2 faces	2 Panel Faces	2 Panel Faces
6	No billboard shall be located within a 1,000-foot radius of another billboard	Billboard 598 ft. to the South Billboard 865 ft. to the North	Billboard 598 ft. to the South Billboard 865 ft. to the North
7	No billboard may exceed 70 feet in height along an interstate as measured from the established road grade at the nearest point of the aforementioned road	35 ft. over I-75 road grade	Max 70 ft. over I-75 road grade
8	Tree preservation.	N/A	N/A
9	No billboard shall be located or erected on a substandard lot. In addition, billboards shall meet all other zoning district regulations, including required setbacks and lot widths. Support structures shall meet the setback requirement; however sign faces may extend 25% into any required setback.	Existing substandard lot - Dimensions Above	Existing substandard lot - Dimensions Above



10	No billboard shall be located or erected on a lot upon which a building is located if such lot or the building thereon has any sign located thereon	Billboard on separate lot from adjoining warehouse building	Billboard on separate lot from adjoining warehouse building
11	No billboard may be located closer to a permanent structure than a distance that is equal to or greater than the height of the sign	Billboard is located 71 feet from building located on adjacent parcel	Billboard will be located 71 feet from building located on adjacent parcel
12	Billboards shall be permitted in LI, HI, CRC, RRC, and OHR zoning districts. Billboards are prohibited in all other zoning districts	Zoned HI	Zoned HI
13	Billboards shall not be permitted within any right-of-way or easement provided for a railroad	Billboard is located adjacent to and over existing railroad spur line servicing Capital Materials.	Billboard is located adjacent to and over existing railroad spur line servicing Capital Materials

## CONSTITUTIONAL OBJECTIONS

COME NOW Clear Channel Outdoor, Inc. and landowner Bryce Development, Inc. (collectively, the "Applicants") and set forth their constitutional objections in the event their variance application is denied.

The Applicants seek variances in the City of Marietta, Georgia, as described in the foregoing application. The present classification of the subject property without the granting of such variances constitutes a taking of the property without payment of adequate compensation. Lamar Adver. of South Georgia v. City of Albany, 260 Ga. 46, 389 S.E.2d 216 (1990). Moreover, the entire Marietta sign code (division 714 of the Marietta Zoning Ordinance) and specifically sections 714.04(G) and 714.06 of the Marietta Zoning Code, violate the First Amendment to the Constitution of the United States and Article I, Section I, Paragraph V (Free Speech) of the Constitution of the State of Georgia. The sign code impermissibly "evidences hostility to signs in general and to commercial signs in particular." Fulton County v. Galberaith, 282 Ga. 314, 647 S.E.2d 24 (2007). Sections 714.04(G) and 714.06 of the zoning code do not directly advance any governmental interest or, in the alternative, regulate speech more extensively than necessary to serve any government interest. Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 101 S.Ct. 2882, 69 L. Ed. 2d 800 (1981); Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York, 447 U.S. 557, 100 S.Ct. 2343, 65 L. Ed. 2d 341 (1980); Union City Bd. of Zoning Appeals v. Justice Outdoor Displays, Inc., 266 Ga. 293, 467 S.E.2d 875 (1996). "To ban any type of commercial speech, the government must have a substantial reason for doing so. A ban on commercial speech must directly

advance the asserted governmental interest, and the prohibition must be tailored so that it sweeps no more broadly than is necessary to achieve that interest.” Fulton County v. Galberaith, 282 Ga. at 318. A government restricting speech “must draw its regulations to suppress no more speech than is necessary to achieve its goals.” Coffey v. Fayette County, 279 Ga. 111, 610 S.E.2d 41 (2005). The Marietta sign restrictions violate these standards.

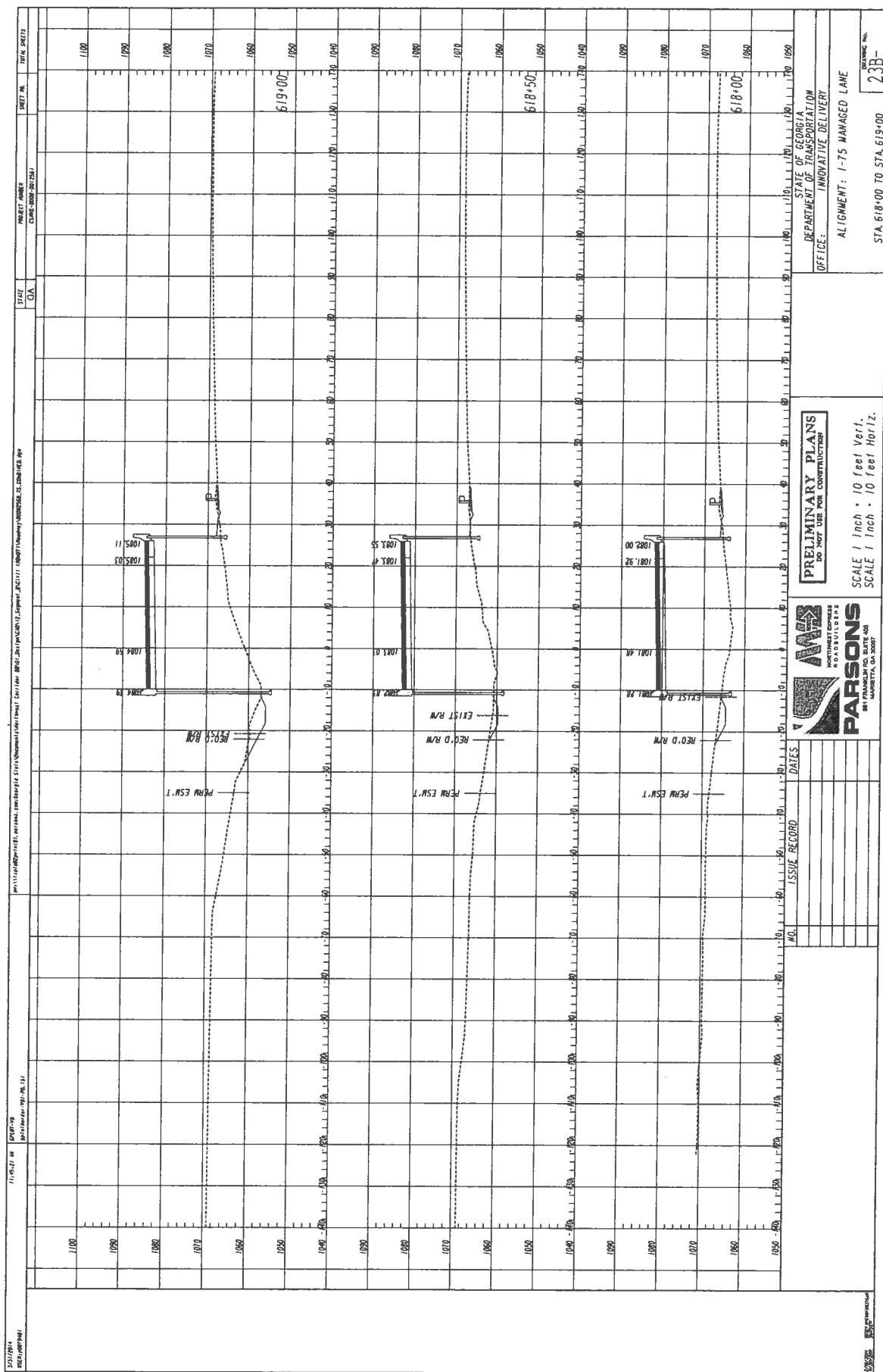
In addition, the arbitrary and capricious denial of the variance application would constitute a violation of due process and equal protection. Tuggle v. Manning, 244 Ga. 29, 159 S.E.2d 703 (1968). The denial of the variance application would not bear a substantial relation to the public health, safety, morals or general welfare. As a result, the denial of the variance application would be arbitrary and capricious. Sellars v. Cherokee County, 254 Ga. 496, 330 S.E.2d 882 (1985).

Further, the variance process set forth in section 714.04(G)(16) violates the applicant’s right to due process, equal protection, and free speech. Specifically, in order for a variance procedure to be valid, it must be “drawn with specific specificity to apprise an applicant of common intelligence of the standards which he should anticipate the governing body will consider” at the time the application is reviewed. Dinsmore Development Co., Inc. v. Cherokee County, 260 Ga. 727, 728 (1990). (Property owner entitled to special use permit for solid waste landfill where ordinance lacked sufficient objective guidelines to base approval or denial of permit); see also, Arras v. Herrin, 255 Ga. 11 (1985) (applicant entitled to beer and wine license where Board of Commissioners had absolute discretion, to approve or deny application permit); and FSL Corporation v.

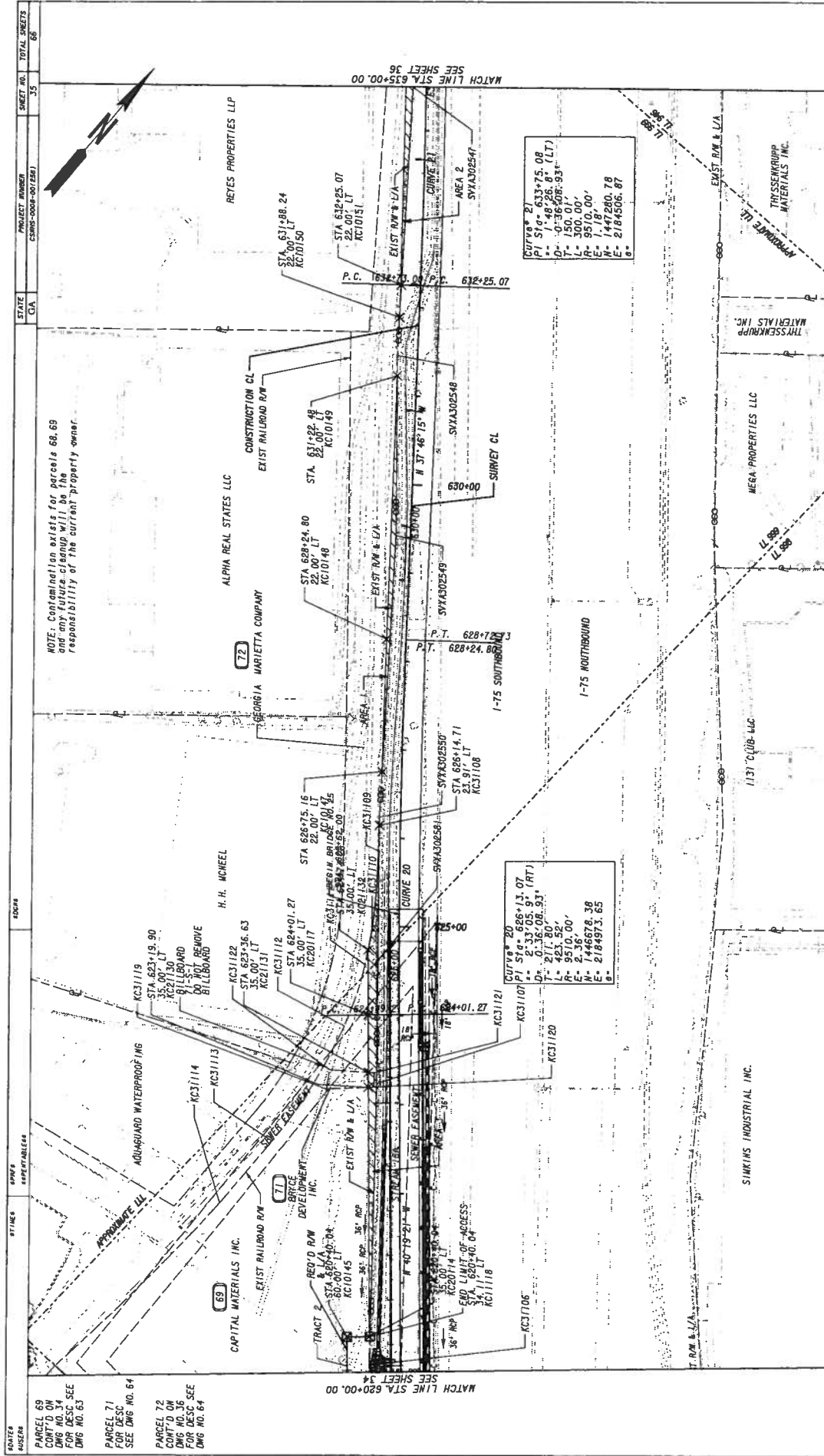
Herrington, 262 Ga. 725 (1993) (applicant entitled to special use permit for sanitary landfill where county ordinance provided no objective criteria for approval or denial thereof). This is especially true where issues of free speech are involved because the government is prohibited from deciding who may speak and who may not based upon the content of the speech or the viewpoint of the speaker. City of Lakewood v. Plain Dealer Publishing Co., 486 U.S 750, 764 (1998).

If the Applicants' variance application is denied, their rights under the First and Fourteenth Amendments to the Constitution of the United States and under Article I, Section I, Paragraph I (Due Process); Article I, Section III, Paragraph I (Eminent Domain); Article I, Section I, Paragraph II (Equal Protection); and Article I, Section I, Paragraph V (Free Speech) of the Constitution of the State of Georgia will be violated. Denial of the application will also constitute an improper exercise of the police power.









PARCEL 69 CONT'D ON DWG NO. 34 FOR DESC SEE DWG NO. 63	PARCEL 71 FOR DESC SEE DWG NO. 64	PARCEL 72 CONT'D ON DWG NO. 36 FOR DESC SEE DWG NO. 64	STATE GA	PROJECT NUMBER CSMS-0008-0012561	SHEET NO. 35 TOTAL SHEETS 66
PROPERTY AND EXISTING R/W LINE REQUIRED R/W LINE CONSTRUCTION LIMITS EASEMENT FOR CONSTR & MAINTENANCE OF SLOPES EASEMENT FOR CONSTR OF DRIVES EASEMENT FOR DEMOLITION	BEGIN LIMIT OF ACCESS END LIMIT OF ACCESS LIMIT OF ACCESS REQ'D R/W & LIMIT OF ACCESS	DATE 08/07/13 08/05/13 11/01/13 01/21/14 04/12/14	REVISIONS SEE SHEET 3A SEE SHEET 3B SEE SHEET 3B SEE SHEET 3C SEE SHEET 3D	DATE 08/07/13 08/05/13 11/01/13 01/21/14 04/12/14	REVISIONS SEE SHEET 3A SEE SHEET 3B SEE SHEET 3B SEE SHEET 3C SEE SHEET 3D
HNTB 3700 NORTHEAST PARKWAY, NW SUITE 100 ATLANTA, GEORGIA 30321	STATE OF GEORGIA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP	PROJECT NO.: CSMS-0008-0012561 COUNTY: COBB LAND LOT NO.: 946, 995, 998, 1019 GMD DATE: 04-20-12 SHEET 35 OF 66	SCALE IN FEET 0 50 100 200	MATCH LINE STA. 620+00.00 SEE SHEET 34	MATCH LINE STA. 635+00.00 SEE SHEET 36

